**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1208 of 1986**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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**G. S. R. T. CORPORATION - Appellant(s)**
**Versus**
**PARVATIBEN W/O BHANABHAI MORABHAI CHAUHAN & 4 - Defendant(s)**

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**Appearance :**
MR MD PANDYA for Appellant(s) : 1,
MR JV BHAIRAVIA for Defendant(s) : 1 - 4.
NOTICE SERVED for Defendant(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 26/07/2006**

**ORAL JUDGMENT**

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Surat passed in M.A.C.P. No.225 of 1984 dated 15.02.1986.

2.0 The brief facts of the case are that on 31.03.1984, when son of present opponent Nos. 1 and 2, Jitendra was proceeding on his cycle towards Ramnagar, he was dashed by a bus driven

by present opponent No.5 and owned by the present appellant. On account of the said accident Jitendra received serious bodily injuries and expired on the spot. Therefore, opponent Nos. 1 and 2 being parent of the deceased Jitendra filed a petition claiming an amount of Rs.85,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Tribunal ought to have properly appreciated the principles of governing determination of liability for negligence. He has further submitted that the Tribunal has committed an error in not applying the correct principles of governing assessment and awarding of compensation.

4.0 On the other hand learned Advocate for

the opponent Nos. 1 to 4 has supported the order of the Tribunal and has contended that the Tribunal has passed the impugned order after taking into consideration all the facts and circumstances of the case, and hence, no case is made out calling interference of this Court.

5.0 Heard, learned Advocate for the appellant as well as learned Advocate for opponent Nos. 1 to 4. Though, served none appears on behalf of the opponent No.5. From the documents produced on record i.e. police complaint filed and produced at Exh.28, 'Panchnama' of the scene of offence Exh.22 and the photographs of the place of incident Exh.29, it clearly transpires that the vehicle in question was being driven in an excessive speed and in a rash and negligent manner. The totality of the evidence on record clearly proves that the driver of the vehicle was driving the offending bus in an excessive speed and in such a manner so as to endanger human life on the road. It may be noted that the opponent

No.5 did not appear before the Tribunal. Hence, the Tribunal has rightly held that the accident in question took place on account of the sole negligence on the part of the opponent No.5.

5.1 From the documentary evidence available on record, it is evident that the age of the deceased at the time of the said accident was 13 years. The deceased was a young boy and had the whole life before him. In this context, it would be relevant to refer to a Division Bench decision of this Court in the case of ***"Ranchhodbhai Somabhai v. Babubhai Bhailalbhai"*** reported in 1982 GLH 28, wherein it has been held that two third of the datum figure would be diverted by the deceased for the maintenance of his own family and one third for the maintenance of his parents. Similar principle has been laid down in a subsequent decision of this Court in the case of ***"Smt. Rafia Sultan Widow of Mirsa Sultan Alil v. Oil and Natural Gas Commission"*** reported in 1985 (2) GLR 1315.

5.2 In the case on hand, the Tribunal has arrived at a datum figure of Rs. 54,000/-. The said figure has been arrived at by taking the monthly income of the deceased to be Rs.300/- and by applying a multiplier of 15 years i.e. 300 X 12 X 15 = 54,000/-. Looking to the facts and circumstances of the case and keeping in mind the age of the deceased, I am of the view that the Tribunal after arriving at the datum figure of Rs. 54,000/-, relying on the principle laid down in the aforesaid decisions, ought to have arrived at an amount of Rs. 18,000/- towards total dependency benefits, i.e. 1/3rd of the datum figure.

5.3 Taking into consideration the age of the deceased, the Tribunal has awarded an amount of Rs. 10,000/- towards loss of expectation of life. I am, therefore, of the opinion that the opponent Nos. 1 and 2 shall be entitled to an amount of Rs.28,000/- by way of compensation.

6.0 In above view of the matter, the appeal is partly allowed. The opponent Nos. 1 and 2 shall be entitled to an amount of Rs.28,000/- by way of compensation. The judgment and award of the Tribunal is modified to the aforesaid extent. Rest of the judgment and award is confirmed. The Tribunal is directed to refund the remaining amount to the appellant. No order as to costs.

(K. S. JHAVERI, J.)

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